IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1977 OF 2005

Shashikant Laxman Prabhu & Ors. ...Applicants

Versus

State of Maharashtra & Ors. ...Respondents

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Mr.Shashikant Laxman Prabhu, in-person for Applicants.

Ms.M.M.Deshmukh, A.P.P. for Respondent No.1.

Mr.R.V.More for Respondents 2 & 5.

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CORAM: A.M.KHANWILKAR, J.

NOVEMBER 16, 2005.

P.C.

1. Heard Mr.Shashikant Laxman Prabhu in-person, who appeared for the Applicants.

2. By this Application, the Applicants have questioned the correctness of the orders passed by the Additional Chief Metropolitan Magistrate dated 25th February 2005 and dated 13th June 2005. It appears that certain documents which were made over to the concerned police officer(s) during course of

investigation of Criminal Case No.1175 of 1999 were allegedly forged and fabricated documents. The same have been lost and misplaced.

3. In this backdrop, Applicants moved an application before the Trial Court to name the concerned police officers as accused along with the other accused for destruction of the said documents. The Court considered the said Application and partly allowed the same by order dated 25th February 2005. The lower Court took the view that there was no allegation that the documents in question were misplaced or destroyed by the concerned police officers in connivance with the accused in the case. However, to reassure itself, the Court directed investigation of that aspect regarding the complicity of the concerned police officers, in exercise of powers under Section 156(3) of the Code of Criminal Procedure. Insofar as this order is concerned, I see no reason to interfere with the same; for I find no infirmity either in the approach or the view expressed by the learned Magistrate in the said order. On the other hand, the course adopted by

the Magistrate was correct and appropriate. Pursuant to the said direction, Assistant Commissioner of Police investigated the matter to ascertain the complicity of the concerned officers in the matter of destruction of the relevant documents. Assistant Commissioner of Police, thereafter, submitted report to the lower Court indicating that the concerned police officers have been proceeded against in departmental action for dereliction of duty. However, during the investigation, nothing has come on record to suggest that misplacement of the said documents was deliberate attempt on the part of the accused, which is the bone of contention of the present Applicants. In this backdrop, the Court below proceeded to reject the request of the Applicants for naming the said police officers as accused for offence of destruction of the relevant documents. Even with regard to this opinion expressed by the Magistrate, I find no reason to depart. No material has been brought to my notice which would even remotely suggest that the concerned police officers have acted in connivance with the accused which has resulted in destruction of relevant

records. As no mens rea can be established from the materials on record against the police officers, the question of naming the said officers as accused for destruction of record cannot be accepted. In this view of the matter, I see no reason to entertain this Application.

4. The Applicants would however, contend that the fact that the concerned police officers acted in connivance, is a matter which will have to be established during the trial. This submission, however, overlooks that unless there is prima facie material to even remotely suggest the involvement of the concerned police officers of having deliberately destroyed the concerned documents, the question of proceeding against the police officers will not arise. In any case, as observed earlier, as there is no material brought to my notice which would remotely connect the said police officers with the allegations of conniving with the accused in destruction of record, no interference is warranted. Hence, dismissed.

A.M.KHANWILKAR, J.